Calendar No. 831

98TH CONGRESS
2d Session

SENATE

REPORT
98-424

MOTOR CARRIER SAFETY ACT OF 1984

MAY 2 (legislative day, APRIL 30), 1984.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2174]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2174) to provide for more effective motor carrier safety regulations and enforcement, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

The Bureau of Motor Carrier Safety (BMCS) of the Department of Transportation (DOT) is responsible for regulating the safety of trucks and buses operating in interstate commerce, including those transporting hazardous materials. Enforcement of the Federal motor carrier safety regulations, however, is constrained due to the small number of inspection personnel and the limited sanctions available for prosecution of safety violations.

In 1982, there were 31,759 truck accidents, resulting in nearly 2,500 fatalities and nearly 26,000 injuries, and causing $321 million in property damage. Bus accidents are far less numerous, with 861 accidents in 1982, but bus safety remains an issue of concern in this industry.

This legislation amends current motor carrier safety statutes administered by BMCS to provide for a comprehensive motor carrier safety program.

BACKGROUND AND NEEDS

Motor carrier safety has been an issue of considerable concern to the Commerce Committee for several years. The Committee has conducted extensive hearings and reported legislation on this issue in the 95th through the 98th Congresses.

Mayor steps were taken in 1982 to improve motor carrier safety with enactment of the Surface Transportation Assistance Act of

31-010 O

1982 (P.L. 97–424). This act authorized a total of $150 million over fiscal years 1984 through 1988 to enable DOT to provide grants to States for enforcement of Federal and compatible State motor carrier safety regulations. In February 1984 testimony before the Surface Transportation Subcommittee, the DOT reported that it had already awarded $6,900,000 in Federal safety grants to 40 States under the Surface Transportation Assistance Act grant program. DOT expects grants to States to total $8 million in fiscal year 1984. This grant program is crucial to the enforcement of motor carrier safety regulations; States will be able to supplement the current Federal safety enforcement efforts.

The 1982 act also provided protection to trucking company employees who report safety violations. Section 405 of the act protects trucking company employees from discharge, discipline, or discrimination "because such employee (or any person acting pursuant to a request of the employee) has filed any complaint or instituted or caused to be instituted any proceeding relating to a violation with a commercial motor vehicle safety rule, regulation, standard or order, or has testified or is about to testify in such proceeding".

Trucking company employees are also protected from discharge, discipline, or discrimination if an employee refuses to operate a vehicle due to the employee's reasonable apprehension of serious injury to himself or to the public due to the unsafe condition of such equipment. The Department of Labor is to investigate employees complaints when such discriminatory activity is alleged. If a violation is discovered, the Secretary of Labor is directed to order affirmative action to abate the violation, including such remmedies as reinstatement and specified compensation and damages.

Nevertheless, the Committee believes that more must be done to enhance motor carrier safety. The following tables demonstrate the magnitude of the motor carrier safety problem:

TABLE 1.—MOTOR CARRIERS OF PROPERTY

	1978	1979	1980	1981	1982
Accidents	33,998	35,541	31,389	32,306	31,759
Fatalities	2,998	3,072	2,528	2,810	2,479
Injuries	32,757	32,126	27,149	28,533	25,779
Property damages	$200,153,506	$304,410,228	$355,106,000	$300,964,705	$321,305,836
Accident rate per million vehicle miles [1]	1.246	1.072	([2])	1.085	0.966
Fatality rate per 100 million vehicle miles [1]	9.342	8.903	([2])	9.129	7.245

[1] Figures for roughly 80 percent of trucks reporting to BMCS.
[2] Not available.

TABLE 2.—MOTOR CARRIERS OF PASSENGERS

	1978	1979	1980	1981	1982
Accidents	728	719	748	832	861
Fatalities	68	60	74	95	76
Injuries	1,917	1,977	1,711	2,041	2,003
Property damage	$4,023,000	$4,485,000	$4,659,000	$5,291,000	$5,565,551
Accident rate per million vehicle miles [1]	0.690	0.580	0.600	0.610	([2])
Fatality rate per 100 million vehicle miles [1]	5.320	4.330	4.920	8.770	([2])

[1] Figures for Class I bus companies only.
[2] Not available.
Source: U.S. Department of Transportation, Bureau of Motor Carrier Safety.

The Committee believes the regulations governing commercial motor vehicle safety must be comprehensively restructured to provide DOT broader enforcement authority, greater uniformity in motor carrier safety regulation, an improved system of penalties for violations of safety regulations, and a meaningful system for determining the safety fitness of motor carriers operating in interstate commerce.

Legislative History

On June 14, 1983, the Senate Commerce Committee conducted a hearing on title III of S. 1108 (the Highway Safety Act of 1983), which pertains to motor carrier safety. On September 20, 1983, the Committee ordered reported S. 1108, as amended, by a voice vote.

On November 18, 1983, title III of S. 1108 as reported, and two provisions of title I of that bill, were introduced as S. 2174. On February 9, 1984, the Surface Transportation Subcommittee conducted a hearing on S. 2174. Testimony was presented by representatives of the DOT, trucking and intercity bus industry groups, the Interstate Commerce Commission (ICC), organized labor, and State regulatory agencies.

On March 27, 1984, the Committee ordered reported S. 2174, with an amendment in the nature of a substitute, by voice vote.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., April 18, 1984.

Hon. Bob Packwood,
Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 2174, the Motor Carrier Safety Act of 1984, as ordered reported by the Senate Committee on Commerce, Science and Transportation, March 27, 1984. Assuming enactment by July 1, 1984, we expect that it would result in a cost to the federal government of less than $1 million over the fiscal years 1984 and 1985, and in no significant costs to state or local governments.

This bill directs the Secretary of Transportation to establish and revise regulations related to the safe operation of commercial trucks and buses. It also requires the Department of Transportation to study the safety characteristics of heavy trucks, methods of crash protection for truck occupants, and the effectiveness of safety-related devices on motor-driven vehicles. The bill authorizes the appropriation of such sums as may be necessary to complete these studies. Based on information from the Department of Transportation, we estimate that the studies on heavy trucks and crash protection would cost between $0.3 million and $0.4 million each, and the study on safety-related devices would cost about $0.1 million.

The bill also requires the Secretary of Transportation to establish standards for annual inspections of commercial motor vehicles. These standards could require motor carrier companies to undertake self-inspection programs and retain these records. Alternatively, states could be made responsible for ensuring that vehicles are inspected annually, either using government-operated facilities or private garages licensed by the state. Twenty-two states, plus the District of Columbia, currently require periodic inspection of commercial motor vehicles, but only three use government-operated facilities. These are supported by fees paid either when the vehicle is registered or at the time of inspection. Based on this experience, it is likely that other states would also recover any inspection costs through fees. If so, this provision would have no significant impact on state or local budgets.

On September 30, 1983, CBO prepared a cost estimate for S. 1108, the Highway Safety Act of 1983, as ordered reported by the Senate Committee on Commerce, Science and Transportation. That bill required the same studies as S. 2174, but also authorized funding for an incentive grant program to aid state safety programs. S. 1108 also specifically authorized $1.2 million in 1984 and $1.4 million in 1985 for a heavy truck study, while the current bill authorizes such sums as may be necessary. Both bills, however, require the study to be completed by September 30, 1985. To accommodate the shorter time-frame imposed by this bill, the Department would have to narrow the scope of the study, but still expects to meet the minimum requirements of the bill. The estimated costs reflect these differences.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation:

NUMBER OF PERSONS COVERED

S. 2174 confers additional regulatory authority on DOT to improve the existing safety regulation of commercial motor vehicles and clarifies DOT's regulatory role over the health of commercial motor vehicle operators. The commercial motor vehicle operations affected, except those operations "affecting" interstate commerce, are covered by existing laws and regulations.

ECONOMIC IMPACT

Section 14 authorizes appropriation of such sums as may be necessary to conduct a comprehensive study of the safety characteristics of heavy trucks, the unique problems related to heavy trucks, and the manner in which such trucks are driven.

Section 15 authorizes appropriation of such sums as may be necessary to study truck occupant protection, including examination of potential and known hazards to truck occupants and means of improving truck occupant safety.

Section 16 authorizes appropriation of such sums as may be necessary for fiscal years 1985 and 1986 to conduct a study of safety-related warning devices.

The above funding levels are envisioned to be modest and are not expected to have an inflationary impact on the Nation's economy.

Section 9 sets forth civil and criminal penalties for violations of Federal commercial motor vehicle safety regulations. These fines are intended to increase compliance with these regulations, but the Secretary, in determining the level of the fine, must consider a violator's ability to pay and the effect of the fine on a person's ability to continue to do business.

PRIVACY

S. 2174, as reported, will not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

Sections 11, 12, and 13 require DOT to initiate rulemaking activities regarding various motor carrier safety issues. Specifically, section 11 requires DOT to initiate a rulemaking on petitions filed by States seeking to retain motor carrier safety regulations which are in addition to or more stringent than the Federal motor carrier safety regulations. Section 12 requires DOT to initiate a rulemaking related to commercial motor vehicle inspection requirements established by S. 2174. Section 13 requires DOT to initiate a rulemaking related to establishment of a procedure to determine the safety fitness of commercial motor vehicles.

S. 2174 also requires studies: (1) section 6 requires the Secretary of Transportation, in consultation with the Director of the National Institute for Occupational Safety and Health and the Secretary of Labor, to conduct a study of health hazards related to commercial motor vehicle operations; (2) section 14 requires the Secretary to study the safety characteristics of heavy trucks; (3) section 15 requires the Secretary to study truck occupant protection; and (4) section 16 requires the Secretary to study safety-related emergency warning devices.

Section 6 requires the Secretary to coordinate the safety and health activities of Federal agencies and to attempt to minimize paperwork burdens. This should lessen paperwork requirements on persons subject to Federal commercial motor vehicle safety regulations and on Federal agencies.

Section-by-Section Analysis

Section 2.—Purposes

This section states that the purposes of this act are: to promote the safe operation of commercial motor vehicles in or affecting interstate commerce; to minimize dangers to the health of commercial

motor vehicle operators and other employees whose employment directly affects motor carrier safety; and to assure increased compliance with traffic laws and with the commercial motor vehicle safety and health rules and regulations issued pursuant to this act. The Committee continues to be concerned about the safety of commercial motor vehicle equipment and the safety records of drivers.

Section 3.—Findings

This section states that the Congress finds: that it is in the public interest to enhance motor vehicle safety; that improved, more uniform commercial motor vehicle safety measures and strengthened enforcement would reduce fatalities, injuries, and property damage related to commercial motor vehicle operations; that enhanced protection of the health of commercial motor vehicle operators is in the public interest; and that States can play an important role in enhancing motor carrier safety.

Section 4.—Definitions

This section defines various terms as used throughout this act.

One of the most significant of the definitions is contained in section 4(1), "commerce." At present, the Secretary of Transportation is empowered to regulate commercial motor vehicle safety primarily with regard to vehicles that cross State lines or national boundaries or perform the intrastate portion of a continuous interstate movement. This class of vehicles is operated primarily by carriers who must obtain operating authority from the ICC plus private and exempt interstate carriers. This definition would authorize the Secretary to promulgate regulations regarding the safety of commercial motor vehicle operations both in and affecting interstate and foreign commerce.

While the definition of commerce in S. 2174 constitutes an extension of DOT's existing authority, the Committee emphasizes that it intends that DOT use this expanded authority cautiously. Under current law, DOT has exempted from its regulations certain types of commerce, such as that which occurs within commercial zones. Section 6 of S. 2174 provides DOT with comparable authority to waive application of any Federal motor carrier safety rule, regulation, standard, or order established pursuant to S. 2174 if such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles. This waiver authority, therefore, will enable BMCS to exempt, as it has in the past, certain types of commerce from the Federal motor carrier safety regulations in cases of small-distance, low-risk transportation.

The definition of "commercial motor vehicle" in section 4(2) includes vehicles used on the highways in commerce which are: (1) 10,000 pounds gross vehicle weight rating or more; (2) designed to transport more than 15 passengers, including the driver; or (3) used in the transportation of hazardous materials (found to be hazardous by the Secretary for purposes of the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq.). The 10,000-pound limit, which is in the current BMCS regulations, is proposed to focus enforcement efforts and because small vans and pickup trucks are more analogous to automobiles than to medium and heavy commercial ve-

hicles, and can best be regulated under State automobile licensing, inspection, and traffic surveillance procedures. However, all vehicles designed to transport 15 or more persons, except school buses when used to transport school children to and from school or school events, would also be covered to assure the highest levels of safety in this particularly important transportation area. In addition, vehicles transporting hazardous materials would be covered because of the potentially greater safety dangers in this area. S. 2174 does not, however, alter any of the law contained in or the regulations promulgated by DOT pursuant to the Hazardous Materials Transportation Act, which under S. 2174 will continue to govern hazardous materials transportation.

The definition of "employee" in section 4(3) includes any individual other than an employer who is employed by a commercial motor carrier and directly affects commercial motor vehicle safety, such as (1) a driver of a commercial motor vehicle (including for purposes of this title any independent contractor while in the course of personally operating a commercial motor vehicle); (2) a mechanic; or (3) a freight handler. The Committee emphasizes that its inclusion of independent contractors under the definition of employee is for the purposes of S. 2174 only; the Committee does not intend that this definition be construed as affecting the interpretation of the Internal Revenue Service as to the status of independent contractors under the tax laws.

An employer is defined in section 4(4) as any person engaged in a business affecting commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it in commerce.

Independent owner-operators' employment status posed a unique problem to the drafters. An independent owner-operator owns his own truck and drives it. He also may own several other trucks and have several drivers working for him. There was no question that the commercial motor vehicles he drives and his driving should be subject to the same safety rules as other commercial motor vehicles on the highway. All commercial motor vehicles if improperly maintained or operated pose a significant threat to the public safety.

It was decided that where an independent owner-operator has the primary responsibility for the maintenance and operation of his commercial motor vehicle or vehicles he should be considered an employer and be subject to the penalty provisions for employers. This is appropriate because the owner-operator does have primary control over the vehicle. Yet the Committee was sensitive to the fact that the financial status of certain owner-operators is closer to that of employees who are subject to much lower penalties. Therefore, in the actual language of section 9 relating to penalties and the report language accompanying the section, the Committee makes clear that, in determining the amount of the penalty, financial status (among other factors), is to be taken into account.

This section also defines the terms "passenger automobile", "person", "Secretary" (that is, the Secretary of Transportation), and "State".

Section 5.—Duties

This section requires employers and employees to comply with the health and safety rules, regulations, standards and orders issued pursuant to this title.

Section 6.—Regulatory authority and standards

This section requires the Secretary of Transportation to establish and revise as necessary rules, regulations, standards, and orders to further the purposes of this act. The section provides that they shall be directed to assuring that (1) commercial motor vehicles are safely maintained, equipped, loaded, and operated; (2) the responsibilities imposed on a driver do not impair his ability to operate the vehicle safely; (3) the physical condition of drivers is adequate to enable them to drive safely; (4) the operation of commercial motor vehicles does not create deleterious effects on the physical condition of such drivers.

The Secretary is required to consider, where practicable, costs and benefits before establishing or revising such rules, regulation, standards, and orders. In requiring the Secretary to consider costs and benefits, where practicable, in the course of regulatory activities, the Committee realizes that many aspects of safety and health regulation do not lend themselves to detailed cost-benefit analysis. However, the Committee intends that DOT, in issuing a regulation, will perform some type of cost-benefit analysis, recognizing that while the benefits of a particular rule or regulation may be substantial, they may not be quantifiable. Additionally, the Committee does not intend such requirement to have the effect of precluding, preventing, or suspending the promulgation or revision of rules, regulations, standards, or orders due to difficulty in establishing specific, quantified cost or benefit data.

This section also requires the Secretary of Transportation to promulgate rules or regulations, both those under this act and those under current law, within 1 year after commencing a proceeding. The Committee intends that the date of publication of a Notice of Proposed Rulemaking constitute the commencement of a proceeding. If this is not possible, the Secretary is required to keep the Congress informed of the reasons for the delay and the efforts and progress being made to complete the proceeding. The purpose of this section is to provide incentives to the DOT to promulgate rules and regulations in a timely manner.

Section 6(c) allows the Secretary to waive the application of any rule, regulation, standard, or order if such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles. This provision should be used with extreme care and should only be used if the Secretary has developed sufficient information to provide adequate assurance that such waiver will not adversely affect the safe operation of commercial motor vehicles. However, the Committee expects that BMCS will continue current exemptions for commerce within commercial zones if that transportation continues to be low-risk.

Section 6(d) directs the Secretary of Transportation, in consultation with the Director of the National Institute for Occupational Safety and Health and the Secretary of Labor, to conduct a study of health hazards to which employees engaged in the operation of commercial motor vehicles are exposed and to develop findings regarding the most appropriate method for regulating and protecting the health of operators of commercial motor vehicles. This study is to be submitted to Congress within 1 year of the date of enactment.

The Committee understands that DOT will find this study out of previously authorized funds.

Section 6(e) requires the Secretary of Transportation to coordinate the activities of Federal agencies to ensure adequate protection of the safety and health of operators of commercial motor vehicles. The Secretary is also directed to attempt to minimize paperwork and other burdens.

The Committee believes it is important to clarify the respective roles of the various Federal agencies in ensuring the safety of commercial motor vehicle operations and the health of operators.

The Secretary of Transportation has the responsibility of protecting the public from unsafe commercial motor vehicles and assuring that commercial motor vehicles are safely maintained, equipped, loaded, and operated, and, therefore, is responsible for related matters insofar as failure to observe pertinent regulations would adversely affect the safety of the public or the health and safety of operators of commercial motor vehicles. However, the Secretary of Transportation is not responsible for protecting employees from asbestos fibers, and toxic fumes involved in the course of properly repairing a brake, nor for the protection of employees from slippery walking surfaces or from inadequately braked forklift trucks, which activities continue to be the responsibility of the Department of Labor.

It is the intent of the Committee that nothing in section 6 of the bill alter this state of affairs which has developed under existing provisions of law. Rather the Committee intends to reaffirm the scope of DOT's authority to regulate safety in this area.

At the same time, the Committee has concluded that neither Department has focused its attention to the extent the Committee believes desirable upon the hazards that commercial motor vehicle drivers face in the course of their work. The Committee bill therefore directs the Secretary of Transportation, in consultation with the Director of the National Institute for Occupational Safety and Health and the Secretary of Labor, to conduct a study of safety and health hazards to drivers, so that the two regulatory authorities will have the information necessary to determine the extent to which they should utilize their respective expertise to deal with these problems.

Section 6 does not provide additional or new regulatory authority to the Secretary of Labor or the Director of the National Institute for Occupational Safety and Health; the DOT Secretary is mandated under this bill to assure the protection of the safety and health of operators while operating commercial motor vehicles. This section requires the Secretaries and the Director to make every attempt to avoid overlap or duplication of activities and to coordinate their efforts. The Committee intends, in the exercise of its regular oversight authority, to follow further developments in these areas of concern.

Section 7—General Powers

This section provides the Secretary of Transportation with broad administrative powers to assist in the implementation of this title.

This section also requires the Secretary or his agents, in carrying out investigation functions, to consult with employers and employees and their authorized representatives and offer them a right of ac-

companiment, as appropriate. The Committee does not intend this requirement to limit unduly DOT inspections or to prevent DOT from undertaking surprise inspections, as is current practice in certain cases. The Committee does, however, intend that employers and employees be consulted and offered a right of accompaniment whenever possible, without hampering DOT inspection efforts.

The Committee understands that DOT possesses the necessary authority under current law to obtain warrants as needed to conduct such inspections.

With respect to enforcement, the Committee emphasizes the importance it attaches to the motor carrier safety grants-in-aid program established under title IV of the Surface Transportation Assistance Act of 1982. That program enables States to provide crucial enforcement activities which serve to supplement Federal motor carrier safety efforts.

Section 8—Duty to investigate complaints; protection of complainants

This section requires the Secretary of Transportation to investigate nonfrivolous written complaints alleging a material violation of this act, the Secretary is also required to take steps to protect the identify of complainants.

Section 405 of the Surface Transportation Assistance Act of 1982 provided that trucking company employers may not discharge, discipline or discriminate against an employee because that employee: (1) filed a complaint or instituted or caused to be instituted any proceeding relating to a violation of a commercial motor vehicle safety regulation; (2) has testified or is about to testify in any such proceeding; (3) refused to operate a vehicle when such operation constitutes a violation of any Federal regulations applicable to commercial motor vehicle safety or health; or (4) has reasonable apprehension of serious injury to himself or the public due to the unsafe condition of such equipment. The section also specifies procedures for dealing with trucking company employees' complaints.

Section 8 of S. 2174 builds on the provisions in section 405 of the 1982 act, to require investigation of nonfrivolous written complaints related to motor carrier operations. The Committee intends that it be clear that a mechanism exists whereby trucking and bus company employees may submit complaints to the DOT concerning material safety violations. The Committee envisions, however, that DOT will focus its resources on the most egregious cases brought to its attention; DOT may investigate the written complaints submitted pursuant to this section to the extent that each such complaint warrants.

Section 9.—Penalties

Section 9(a) amends section 507 of title 49, United States Code, to allow the Attorney General, at the request of the Secretary of Transportation, to bring an action for equitable relief to redress a violation of this act or existing Federal commercial motor vehicle safety standards.

Section 9(b) amends section 521(b) of title 49 to set forth civil and criminal penalties available to the Secretary for enforcing violations of this act or existing. Federal commercial motor vehicle safety standards and the procedure for the Secretary to follow if he

finds that a violation has occurred. The Committee believes the broader penalty authority and increased penalty levels set forth in this section are necessary to ensure increased compliance with the Federal commercial motor vehicle safety regulations.

Subsection (b) provides for a civil penalty of up to $500 for a recordkeeping violation. The total of all recordkeeping violations shall not exceed $2,500, and recordkeeping is the only violation for which penalties are cumulative. If the Secretary determines that a serious pattern of safety violations, other than recordkeeping requirements, exists or has occurred, a civil penalty of up to $1,000 for each violation may be assessed, to a maximum fine for each such pattern of violations of $10,000. If the Secretary determines that a substantial health or safety violation exists or has occurred which could reasonably lead to or has resulted in serious personal injury or death, a civil penalty of up to $10,000 may be assessed for each offense. However, no civil penalty, except recordkeeping penalties, may be assessed against an employee unless the employee is the operator of a commercial motor vehicle and the Secretary of Transportation determines that the employee's actions constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for a civil penalty up to $1,000. The Committee expects that drunk and drugged driving would constitute such behavior. In assessing civil penalties, the Secretary is to take into account the nature, circumstances, extent, and gravity of the violation and the degree of culpability, history of prior offenses, ability to pay, and effect on ability to continue to do business of the violator. The assessment is to be calculated to induce further compliance.

The Committee believes that an employee who is operating a commercial motor vehicle in a grossly negligent manner or with reckless disregard for safety and in violation of this title should be subject to a civil penalty. At the same time, the Committee recognizes the fact that employees and employers enjoy a different financial status. The level of penalty necessary to provide a deterrent to an employer could have the effect of financially bankrupting an employee. The different levels of penalties for employers and employees are designed, therefore, to create adequate incentives to assure compliance with the act.

The Committee also emphasizes that, for the puurposes of this act only, an owner-operator while in the course of personally operating a commercial motor vehicle for a commercial motor carrier is considered an employee for penalty purposes. When the owner-operator is not acting in such capacity, for purposes of this title he shall be treated as an employer. However, the Secretary, in assessing a civil penalty for an owner-operator or any other carrier, is directed to take into account, among other criteria, the ability to pay and effect on ability to do business.

The Committee recognizes that the safety regulation and monitoring of a vast trucking industry and a large intercity bus industry cannot be done without a large degree of voluntary compliance and documentation by records to validate the safety compliance efforts of the 200,000 individual companies that derive their livelihood from the conduct of their business on the public highways. Thus, the bill provides authority to require safety records—for example, hours-of-service

records, vehicle inspection and maintenance records, and driver qualification records. The bill also provides sanctions for the willful failure to prepare, use and retain such records that can be audited by State and Federal authorities.

Certain equipment violations, if allowed to continue, will result in accidents, deaths, injuries, and public property damage. These defects are so blatant that no carriers or drivers could have operated vehicles on the public highway without knowing that the defects exist, and therefore, chose to disregard public safety. These kinds of violations include defective brake systems, loose steering boxes, broken rims or wheel studs, and tires worn into the casing. The bill provides criminal and civil penalties for this type of aggravated violation of the law and rules of safety.

There is a middle range of violations between those of recordkeeping noncompliance and willful cast of negligence. These types of violations are those in which a carrier or driver simply fails to maintain equipment or disregards hours-of-service limitations because it is inconvenient or because it is profitable not to comply with the equipment standards and operational safety rules. These types of violations are not the isolated human errors, but are tolerated patterns of equipment violations or operating conduct that any responsible business entity could detect and correct if it wanted to meet its full safety responsibility to the public. The bill provides for sanctions for those "serious patterns of safety violations" that individually would not have a high probability of causing an immediate accident, but collectively demonstrate an unwillingness to exercise proper safety superivision or control, which will lead to accidents. These types of violations include general failure to maintain equipment, control hours of service, or screen drivers' qualifications before dispatching the drivers and vehicles into commerce. In granting this authority for the middle range of violations, the Committee expects the DOT to focus on serious patterns of violations and, in assessing penalties, to take into account the various factors enumerated in the bill, including the extent and gravity of the patterns and the ability of the carrier to pay.

This subsection authorizes the Secretary to require a violator to post a copy of a notice of violation or a statement thereof. The Secretary is also authorized to place a vehicle or an employee operating such vehicle out of service or to order an employer to cease all or part of his commercial motor vehicle operations if the Secretary determines that an imminent hazard to safety exists. "Imminent hazard" is defined as any condition of vehicle, employee, or commercial motor vehicle operations which is likely to result in serious injury or death if not discontinued immediately.

Subsection (b) provides for criminal penalties for employers and employees operating a commercial motor vehicle who knowingly or willfully violate the provisions of section 3102 of title 49, United States Code, or this act. Penalties for an employer are a fine of up to $25,000 and/or imprisonment not to exceed 1 year. An employee is subject to a $2,500 fine, which the Committee believes is sufficient deterrent for an employee, who would also be subject to employer sanctions and State laws.

The Secretary is required to promulgate regulations establishing penalty schedules designed to induce timely compliance for those fail-

ing to comply promptly with the requirements set forth in notices and orders. Subsection (b) also provides for review of orders issued under this subsection and provides that penalties and fines imposed shall be deposited into the Highway Trust Fund. The Committee encourages the DOT to allocate these funds for use in improving the National Driver Register.

In any action brought under this subsection, process may be served without regard to the territorial limits of the district or the State in which the action is brought. This subsection provides procedures for criminal contempt proceedings in accordance with the Federal Rules of Criminal Procedure.

Section 10—Litigation authority

This section amends Public Law 97–424 to require the Department of Justice to represent the DOT in litigation related to highway safety.

Section 11—State regulations

Section 11(a) parallels language in the Federal Railroad Safety Act of 1970 (45 U.S.C. 434). This section requires that State motor carrier safety laws, rules, regulations, orders, and standards be nationally uniform to the extent practicable. A State may adopt or continue in effect a law, rule, regulation, order, or standard until the Secretary has adopted a rule, regulation, order, or standard regarding the subject matter of such State requirement. In this regard, the Committee assumes that DOT regulations already in effect need not be readopted.

Subsection (b) provides a procedure whereby a State which has additional or more stringent commercial motor vehicle safety laws, rules, regulations, standards, or orders may petition the Secretary for review. Within 120 days of enactment, each State which has an additional or more stringent commercial motor vehicle safety law, rule, regulation, standard, or order is to petition the Secretary for review of each such law, rule, regulation, standard, or order. Any additional or more stringent State requirement which is not identified by a State in its petition to the Secretary will be preempted 120 days after the date of enactment of this act.

Subsection (c) requires the Secretary to initiate a rulemaking on each State petition filed pursuant to subsection (b) and to issue a final rule in each such rulemaking proceeding within one year after the date of enactment of this act. If the Secretary determines that any such rulemaking will not be completed within that 1-year period, the Secretary is to notify the Congress and furnish the reasons for the delay. The Committee intends that the Secretary quickly determine which State requirements are to remain in effect. Nevertheless, the Committee recognizes the need for flexibility in this rulemaking process, especially as many State legislatures do not meet annually. The Secretary, therefore, has the authority to defer action on some State regulations in such cases.

Subsection (c) provides that a State may continue in effect an additional or more stringent law, rule, regulation, standard, or order upon a finding by the Secretary, in the rulemaking procedure established in subsection (b), that there is a compelling local safety need therefor, that the State requirement is not incompatible with Federal safety requirements, and that it will not unduly burden interstate commerce.

Any State safety law, rule, regulation, standard, or order which the Secretary determines does not meet the specified criteria will cease to have any effect 60 days after the Secretary's final decision is published in the Federal Register.

Subsection (d) provides that any State seeking to put into effect an additional or more stringent commercial motor vehicle safety requirement after the date of enactment of this act shall petition the Secretary for review. The Secretary is required to initiate a rulemaking on each such petition and shall issue a final rule within 180 days after receipt of a State's petition. A State may adopt an additional or more stringent safety requirement subject to meeting the criteria specified for State regulations in effect on or prior to the date of enactment of this act.

It is the Committee's intention that there be as much uniformity as practicable whenever a Federal standard and a a State requirement cover the same subject matter. However, a State requirement and a Federal standard cover the same subject matter *only* when meeting the minimum criteria of the less stringent provision causes one to violate the other provision on its face. This is called the "enforcement test."

Application of this enforcement test to the Federal regulations contained in 49 C.F.R. and a body of State requirements will result in the State requirements being grouped into one of three types.

—*Type A*. State requirements that cover the same subject matter as the Federal regulation but are "additional or more stringent".

—*Type B*. State requirements that cover the same subject matter as the Federal regulation but are not "additional or more stringent".

—*Type C*. State requirements where there is not a Federal standard regarding the same subject matter.

The bill requires that the States must provide a list of all *Type A* requirements within 120 days of the date of enactment. *Type B* requirements would be preempted at this point. *Type C* requirements would not be affected unless and until a Federal regulation was promulgated in the same subject matter as the State requirement.

An example helps to illustrate this meaning. The only general driver age requirement of the Federal Motor Carrier Safety Regulations (FMCSR) is that the driver of a commercial motor vehicle be at least 21 years old (49 C.F.R. 391.11 (b)(1)). Assume that a State allowed 18-year-olds to drive commercial motor vehicles during the day, required drivers to be 25 to drive such vehicles at night, and imposed a maximum driving age of 65 years.

The enforcement test is applied by comparing each State requirement to the applicable Federal requirement to determine whether meeting the minimum criteria of the less stringent provision causes one to violate the other provision on its face. An 18-year-old who complies with the State requirement violates the Federal regulation. Therefore, the two requirements cover the same subject matter and since the State requirement can be met by a larger group of people, it is a less stringent *Type B* requirement and would be preempted. A 21-year-old who drives at night complies with the Federal requirement but violates the State requirement on its face. Since it is easier to meet the Federal requirement, the State requirement is additional and

more stringent and is *Type A*. The test of additional and more stringent is a single test that is applied after a State requirement and a Federal regulation are determined to cover the same subject matter.

The enforcement test is applied to the age 65 requirement by checking to see whether meeting the minimum criteria of the less stringent provision (being 21 and complying with the Federal regulation) violates the State requirement. It obviously does not. When the Federal regulation establishes only minimum criteria, it does not prevent a State from setting maximum criteria.

Application of the enforcement test determines that the 25-year-old requirement is Type A, the 18-year-old requirement is Type B, and the 65-year-old requirement is Type C. The Type A requirement would continue in effect while the Secretary conducted a rulemaking to see if the additional and more stringent requirements met certain tests. The State requirement would be effective at the end of the rulemaking if the Secretary determined that the State requirement did not unduly burden interstate commerce and was not incompatible with the Federal regulations, and there was a compelling local need for the more stringent standard. Type B is preempted, and Type C continues in effect.

In adopting this section, the Committee does not intend that States with innovative safety requirements that are not identical to the national norm be discouraged from seeking better ways to protect their citizens, so long as a strong safety need exists that outweighs this goal of uniformity. Section 11 emphasizes the need for uniformity but allows some flexibility for State requirements which strengthen safety. Also, the Committee does not intend that this section alter the preemption standard of consistency in the Hazardous Materials Transportation Act, which would apply to commerce regulated pursuant to that act.

Subsection (e) states that this act shall not affect existing State hour-of-service regulations applying to commercial motor vehicle operations occurring wholly within the State unless the Secretary of Transportation finds upon review of a State's hours-of-service regulations that such State regulations materially diminish commercial motor vehicle safety or health, are not required by compelling local conditions, or unduly burden interstate commerce. If such an affirmative determination is made by the Secretary, a State may be required to adopt Federal hours-of-service regulations.

As the Federal and State laws are being conformed in accordance with this section, the Committee expects that the current Motor Carrier Safety Advisory Committee will assist in that effort.

Section 12—Inspection

Section 12(a) requires all commercial motor vehicles to pass an equipment inspection based on Federal standards, no less often than annually. Section 12(b) requires the Secretary to establish by rule Federal standards for these commercial motor vehicle inspections and for the retention by employers of records of such inspections.

The Committee does not intend this to be a burdensome requirement. Many motor carriers currently have excellent self-inspection programs. The Committee expects and intends that the inspection requirement could be met by such programs.

In establishing this inspection requirement, the Committee seeks to ensure that inspection programs are uniform throughout the country and meet certain specified minimum safety requirements. This requirement is not intended, however, to preclude current roadside inspection procedures if they meet the Federal standards to be established under this section.

Section 12(c) requires the Secretary to initiate a rulemaking within 60 days of the date of enactment to afford interested parties an opportunity to comment on part 393 of subchapter B of chapter 3 of title 49, Code of Federal Regulations and on the inspection and retention procedure required under subsection (b). The Committee expects the DOT to request specifically comment in this rulemaking as to whether the equipment requirements currently specified by the Commercial Vehicle Safety Alliance constitute an appropriate substitute for part 393 and an appropriate set of equipment inspection requirements.

Section 12(d) specifies that the periodic inspection established pursuant to subsection (b) is to be recognized as adequate in every State for the period of such inspection. Such reciprocity is crucial, in the Committee's view, toward promoting uniformity in inspection in furtherance of safety. This does not, however, prohibit a State from making random inspections of commercial motor vehicles.

Section 13—Certification of safety fitness

Section 13(a) requires the DOT, in cooperation with the ICC, to establish safety fitness standards applicable to commercial motor vehicles—both to carriers regulated by the ICC and those which are exempt and incuding persons seeking new or additional motor carrier operating authority. The safety fitness procedure shall include: specific initial and continuing requirements to prove safety fitness; a means of determining whether carriers meet these safety fitness requirements; and specific time deadlines for action by DOT and the ICC in making safety fitness determinations.

The Committee notes that the initial safety fitness requirements pertain to new carriers seeking common or contract carrier authority, existing carriers seeking an expansion of their common or contract authority, and private carriers seeking for-hire authority. All such carriers must meet the fitness test before being allowed to obtain operating authority, and of course are subject to the continuing safety fitness requirement.

Subsection (b) requires the Secretary of Transportation to submit a copy of this safety fitness procedure to Congress within 1 year of the date of enactment.

Subsection (c) provides that this safety fitness procedure shall supersede all previous rules regarding DOT safety fitness assessments and ratings of motor carriers.

Subsection (d) prohibits the ICC from granting motor common or contract carrier operating authority to an applicant that does not meet the safety fitness requirements established pursuant to this section. The Committee does not intend this strengthened safety fitness requirement to be burdensome or to act as a barrier to entry into the motor carrier industry. Rather, the Committee seeks to ensure that all motor carriers operating on the highways are truly safe. This

is of particular concern with regard to first-time applicants for truck and bus operating authority. With the eased economic entry requirements pursuant to regulatory changes embodied in the Motor Carrier Act of 1980 and the Bus Regulatory Reform act of 1982, the safety fitness of applicants, as well as existing carriers, assumes increasing importance. The Committee has been concerned about recent cases where operating authority was granted by the ICC to carriers with clear safety problems.

The Committee expects that DOT and the ICC will develop and implement the new safety fitness procedure within current budgetary and personnel ceilings.

Section 14—Heavy Truck Research

Section 314(a) requires the National Highway Traffic Safety Administration (NHTSA) at DOT to undertake research into the safety characteristics of heavy trucks, the unique problems associated with heavy trucks, and the manner in which such trucks are driven. The comprehensive study required under this section is to include an examination of the handling, braking, stability and crashworthiness of heavy trucks, as well as the programs and needs of enforcement agencies to assure compliance with traffic laws by commercial motor vehicle drivers.

In 1982, Congress authorized uniform truck size dimensions to increase productivity and efficiency in the trucking industry, which is resulting in larger trucks being allowed throughout the United States. The Committee is continuing to monitor closely the safety of all trucks and is aware that large trucks (10,000 pounds and greater) have been found to be involved disproportionately in fatalities.

According to the Insurance Institute for Highway Safety, in 1978 (the most recent year for which a detailed analysis of truck crashes was made), large trucks were involved in 432,000 crashes, about 6 percent of the national crash total. However, they contributed to 12 percent of the national total of fatal crashes, largely due to the difference in weight between trucks and other involved vehicles. This problem is further compounded by the fact that there is no meaningful Federal regulation to prescribe maximum stopping distances for large trucks.

The Committee intends that the DOT thoroughly examine all safety aspects of heavy trucks, including the need for amended Federal standards. The Committee also intends that inclusion in this study of programs and needs of enforcement agencies to assure compliance with traffic laws by commercial motor vehicle drivers in no way diminishes DOT's investigation of the safety characteristics of and problems associated with heavy trucks.

Section 14(b) authorizes appropriation of such sums as may be necessary for fiscal years 1985 and 1986 to conduct the research required under subsection (a). The Committee envisions funding levels of at least $1,200,000 for fiscal 1985 and $1,400,000 for fiscal 1986 as being necessary to successfully and thoroughly conduct this research.

Section 15—Truck occupant protection

This section directs the DOT to undertake a study of crash protection for truck occupants. The study is to investigate potential and

known hazards to truck occupants and means of improving truck occupant safety, and evaluate potential performance standards to be met by manufacturers. This study is to be submitted to Congress within 1 year of the date of enactment. This section authorizes appropriations of such sums as are necessary in fiscal 1985 and 1986 to undertake this study.

Little attention has been given by the Government to truck occupant protection. For example:

(1) The NHTSA at the DOT is the only agency with authority to set occupant protection standards for trucks. The few existing standards for heavy trucks were established years after comparable standards were set for passenger cars. Many occupant protection standards that were set 10 to 15 years ago for passenger cars have never been established for trucks. For instance, crashworthiness standards for heavy trucks have not been established to give drivers adequate protection.

(2) The design of the truck steering wheel has been neglected, even though abdominal injuries repeatedly have been shown to be especially common in injured truck drivers.

(3) Changing the design of products (for example, multipiece truck wheels which often explode) could substantially reduce the risk of injury for workers.

(4) Despite the fact that seatbelts, when used, substantially reduce deaths and severe injuries to automobile occupants, OSHA has not promulgated regulations to require their use in company-owned cars. Further, most employers (including the Government) either do not require or do not enforce seatbelt use.

Truck occupant protection is a major safety and occupational health problem. Occupational injuries in the United States result in an estimated 13,000 deaths, 245 million lost work days, and $25 billion in direct and indirect costs each year. Motor vehicle crashes are the leading cause of fatal injuries in the workplace. This is an especially important concern in the trucking industry which employs roughly 2 million drivers in the United Staes. According to NHTSA figures, in 1981, 1,131 occupants of heavy trucks died in the United States.

According to March 1983 testimony presented by the International Brotherhood of Teamsters before the Subcommittee on Surface Transportation, truck drivers sustained 9.9 percent of all work-related fatalities, yet comprise only 2.7 percent of the employed workforce, according to 1979 Department of Labor statistics. According to March 1983 testimony presented by Johns Hopkins University before the Subcommittee on Surface Transportation, the death rate of truck drivers is much higher than that of the average worker. For example, in Wisconsin, a truck driver has approximately 9 times as great a chance of being killed on the job as the average worker, while in Maryland, 1 out of every 10 workers killed is a truck driver.

Section 15 requires NHTSA to investigate hazards to truck occupants. The Committee expects NHTSA to consider at least the following: the need for truck cabs that do not collapse easily in a crash and that make it possible to remove injured occupants easily; the need for steering wheels that do not focus crash forces on a small area of the abdomen; glass retention; passive and active occupant restraints; and cab size/driver accommodation.

Section 16—Study of safety related devices

This section requires the Secretary of Transportation to undertake a study of the safety improvement potential of devices such as flare kits and distress signalling systems. These devices would be carried in all motor vehicles. This study is to be submitted to Congress within 6 months of the date of enactment. This section authorizes appropriation of such sums as are necessary in fiscal years 1985 and 1986 to undertake this study.

Prior to 1973, DOT regulations provided buses, trucks, truck-tractors, and other motor driven vehicles with a choice of type of emergency warning device, or a combination thereof. In October 1979, a Notice of Proposed Rulemaking was issued by the Bureau of Motor Carrier Safety which was designed to make regulations consistent with Federal Motor Vehicle Safety Standard 125. The new regulations provided that a vehicle must carry a reflective triangle and could also carry fuses (flares), red electric lanterns and liquid burning pot flares.

At that time, there was a movement to make traffic signs and signals conform to an international pattern. In some foreign countries the signal for a stopped vehicle in an emergency situation was a reflective triangle. In the rulemaking proceeding, therefore, it was generally accepted that reflective triangles and fuses would be the authorized emergency warning devices. Other types of warning devices would be "phased out." Ultimately, the reflective triangle was designated as the only required emergency warning device, despite recognition by the vast majority of the parties participating in the proceeding that flares provide greater warning capability than reflective triangles.

Another concern is distress signalling for stranded automobile occupants. When a car becomes disabled, this presents a risk to that vehicle's occupants as well as to the drivers sharing the highway with the disabled motorist. Poor visibility of disabled vehicles of all types can present significant safety problems.

Section 16 requires DOT to conduct a study of the effectiveness of existing regulations regarding emergency warning devices required to be carried on buses, trucks, truck-tractors, and motor-driven vehicles which are involved in emergency situations. The study shall also investigate the potential costs and benefits of requiring passenger automobile operators to carry emergency warning devices, and shall examine the relative benefits of various types of warning devices in enhancing highway safety.

The Committee intends that DOT's report to the Congress fairly evaluate and determine the safest emergency warning device to be used by regulated vehicles and determine whether passenger automobiles should be required to carry any type of distress signaling system.

Section 17.—Oversight

This section requires annual Congressional oversight hearings for three years on the effects of this title and to ensure that it is being implemented according to Congressional intent and the purposes of this title.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

Section 507 of that title

§ 507. Enforcement

(a)–(b) * * *

(c) The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of section 3102 of this title or the Motor Carrier Safety Act of 1984, or an order or regulation issued under such section or Act. Such district court shall have jurisdiction to determine any such action and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

[(c)] *(d)* A person injured because a rail carrier or freight forwarder does not obey an order of the Secretary under this chapter may bring a civil action to enforce that order under this subsection.

[(d)] *(e)* In a civil action brought under subsection (a)(2) of this section against a motor carrier, motor carrier of migrant workers, or motor private carrier—

(1) trial is in the judicial district in which the carrier operates;

(2) process may be served without regard to the territorial limits of the district or of the State in which the action is brought; and

(3) a person participating with the carrier in a violation may be joined in the civil action without regard to the residence of the person.

Section 521 of that title

§ 521. Civil penalties

(a) * * * *

[(b)(1) A person required to make a report to the Secretary, answer a question, or make, prepare, or preserve a record under this chapter about transportation by motor carrier, or an officer, agent, or employee of that person, that (A) does not make the report, (B) does not specifically, completely, and truthfully answer the question, or (C) does not make, prepare, or preserve the record in the form and manner prescribed by the Secretary, is liable to the Government for a civil penalty of not more than $500 for each violation and for not more than $250 for each additional day the violation continues.

[(2) Trial in a civil action under this subsection is in the judicial district in which (A) the motor carrier has its principal office, (B) the motor carrer was authorized to provide transportation under subtitle

IV of this title when the violation occurred, (C) the violation occurred, or (D) the offender is found. Process in the action may be served in the judicial district of which the offender is an inhabitant or in which the offender may be found.]

(b) (1) If the Secretary finds that a violation of section 3102 of this title or the Motor Carrier Safety Act of 1984, or a violation of a regulation issued under such section or such Act, has occurred, the Secretary shall issue a written notice to the violator. Such notice shall describe with reasonable particularity the nature of the violation found and the provision which has been violated. The notice shall fix a reasonable time for abatement of the violation, specify the proposed civil penalty, if any, and suggest actions which might be taken in order to abate the violation. The notice shall indicate that the violator may, within 15 days of service, notify the Secretary of the violator's intention to contest the matter. In the event of a contested notice, the Secretary shall afford such violator an opportunity for a hearinfi, pursuant to section 554 of title 5, following which the Secretary shall issue an order affirming, modifying, or vacating the notice of violation.

(2) Except as otherwise provided in this subsection, any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of recordkeeping requirements issued by the Secretary pursuant to section 3102 of this title or the Motor Carrier Safety Act of 1984 shall be liable to the United States for a civil penalty not to exceed $500 for each offense. Each day of a violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator shall not exceed $2,500. If the Secretary determines that a serious pattern of safety violations, other than recordkeeping requirements, exists or has occurred, the Secretary may assess a civil penalty not to exceed $1,000 for each offense: Provided, however. That the maximum fine for each such pattern of safety violations shall not exceed $10,000. If the Secretary determines that a substantial health or safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death, the Secretary may assess a civil penalty not to exceed $10,000 for each offense: Provided, however, That, except for recordkeeping violations, no civil penalty provided under this section shall be assessed against an employee for a violation of this section unless the Secretary determines that such employee's actions constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for a civil penalty not to exceed $1,000. The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violation, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.

(3) The Secretary may require any violator served with a notice of violation to post a copy of such notice or statement of such notice in

such place or places and for such duration as the Secretary may determine appropriate to aid in the enforcement of section 3102 of this title or the Motor Carrier Safety Act of 1984.

(4) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, before referral to the Attorney General, such civil penalty may be compromised by the Secretary.

(5)(A) If, upon inspection or investigation, the Secretary determines that a violation, or combination of violations, poses an imminent hazard to safety, the Secretary shall order a vehicle or employee operating such vehicle out of service, or order an employer to cease all or part of the employer's commercial motor vehicle operations. In making any such order, the Secretary shall impose no restriction on any employee or employer beyond that required to abate the hazard. Subsequent to the issuance of the order, opportunity for review shall be provided in accordance with section 554 of title 5, except that such review shall occur not later than 10 days after issuance of such order.

(B) In this paragraph, "imminent hazard" means any condition of vehicle, employee, or commercial motor vehicle operations which is likely to result in serious injury or death if not discontinued immediately.

(6) Any person who knowingly and willfully violates any provision of section 3102 of this title or the Motor Carrier Safety Act of 1984, or a regulation issued under this title or such Act, shall, upon conviction, be subject for each offense for a fine not to exceed $25,000 or imprisonment for a term not to exceed 1 year, or both, except that, if such violator is an employee, the violator shall only be subject to penalty if, while operating a commercial motor vehicle, the violator's activities have led or could have led to death or serious injury, in which case the violator shall be liable, upon conviction, for a fine not to exceed $2,500.

(7) The Secretary shall promulgate regulations establishing penalty schedules designed to induce timely compliance for persons failing to comply promptly with the requirements set forth in any notices and orders under this subsection.

(8) Any aggrieved person who, after a hearing, is adversely affected by a final order issued under this section may, within 30 days, petition for review of the order in the United States court of appeals in the circuit wherein the violation is alleged to have occurred or where the violator has his principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit. Review of the order shall be based on a determination of whether the Secretary's findings and conclusions were supported by substantial evidence, or were otherwise not in accordance with law. No objection that has not been urged before the Secretary shall be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Secretary.

(9) All penalties and fines collected under this section shall be deposited into the Highway Trust Fund.

(10) In any action brought under this section, process may be served without regard to the territorial limits of the district of the State in which the action is brought.

(11) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(12) As used in this subsection, the term—

(A) "commerce" means trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, or which affects trade, traffic, or transportation between a place in a State and a place outside of such State;

(B) "commercial motor vehicle" means any self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo—

(i) of such vehicle has a gross vehicle weight rating of 10,000 or more pounds;

(ii) if such vehicle is designed to transport more than 15 passengers, including the driver, except for a schoolbus, as defined in section 102(14) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391(14)), when used in transporting primary, pre-primary, or secondary school students to or from such schools or events related to such schools; or

(iii) if such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.);

(C) "employee" means—

(i) a driver of a commercial motor vehicle (including, for purposes of this subsection only, an independent contractor while in the course of personally operating a commercial motor vehicle);

(ii) a mechanic;

(iii) a freight handler; or

(iv) any individual other than an employer; who is employed by a commercial motor carrier and who in the course of this employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States or any State who is acting within the course of such employment;

(D) "employer" means any person engaged in a business affecting commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it in commerce, but such term does not include the United States or any State;

(E) "person" means one or more individuals, partnerships, associations, corporations, business trusts, or any other organized group of individuals; and

(F) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas, or a political subdivision thereof.

Section 2313 of that title

§ 2313. Enforcement

[The Secretary, or, on] *On* the request of the Secretary, the Attorney General of the United States, is authorized and directed to institute any civil action for injunctive relief as may be appropriate to assure compliance with the provisions of this title. Such action may be instituted in any district court of the United States in any State where such relief is required to assure compliance with the terms of this title. In any action under this section, the court shall, upon a proper showing, issue a temporary restraining order or preliminary or permanent injunction. In any such action, the court may also issue a mandatory injunction commanding any State or person to comply with any applicable provision of this title, or any rule issued under authority of this title.

Section 3102 of that title

§ 3012. Requirements for qualifications, hours of service, safety, and equipment standards

(a)–(c) * * *

(d) The Secretary shall, before prescribing or revising any requirement under this section, consider the costs and benefits of such requirement.

○